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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/614,444

07/07/2003

Wilhelm Horger

P03,0213

7528

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03/20/2007

SCHIFF HARDIN, LLP
PATENT DEPARTMENT
6600 SEARS TOWER
CHICAGO, IL 60606-6473

EXAMINER

JOHNS, ANDREW W

ART UNIT

PAPER NUMBER

2624

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
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3 MONTHS

03/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/614,444

Applicant(s)

HORGER ET AL.

Examiner

Andrew W. Johns

Art Unit

2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-18 is/are allowed.
- 6) ☒ Claim(s) 19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to because many of the characters in Figures 1 and 2 are not uniformly thick and well-defined, as required by 37 C.F.R. § 1.84(l). Corrected drawing sheets in compliance with 37 C.F.R. § 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 C.F.R. § 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 U.S.C. § 101

2. 35 U.S.C. § 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

M.P.E.P. § 2106.01 reads, in part, as follows:

Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and

computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data.

When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)(discussing patentable weight of data structure limitations in the context of a statutory claim to a data structure stored on a computer readable medium that increases computer efficiency) and *Warmerdam*, 33 F.3d at 1360-61, 31 USPQ2d at 1759 (claim to computer having a specific data structure stored in memory held statutory product-by-process claim) with *Warmerdam*, 33 F.3d at 1361, 31 USPQ2d at 1760 (claim to a data structure per se held nonstatutory).

In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035.

3. Claim 19 is rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

Claim 19 is directed towards a "computer program product" that is defined as being "loadable" into a processing device, and as "causing processing device" to perform operations corresponding to the inventive method. Because the claim does not define the product as including any computer-readable storage medium, or recite the combination of the computer program embodied on such a computer-readable storage medium, the claim language appears to be directed to the computer program *per se*. While such a computer program is clearly functional descriptive material, such functional descriptive material can only be considered patent eligible subject matter when it is properly defined in combination with a computer-readable storage medium, so as to allow the functionality of the program to be realized by a programmable system. It is suggested that amending this claim to clearly define that the computer program is embedded on a computer-readable storage medium would resolve this

issue. Any such amendment to the claim should be commensurate with its corresponding disclosure.

Allowable Subject Matter

4. Claims 1-18 are allowed.
5. The following is a statement of reasons for the indication of allowable subject matter: While the prior art does teach the determination of time curves for arterial contrast agent concentration, the prior art fails to teach or fairly suggest displaying such a curve using a test bolus pop-up in an active graphical user interface, as stipulated by the claimed invention.

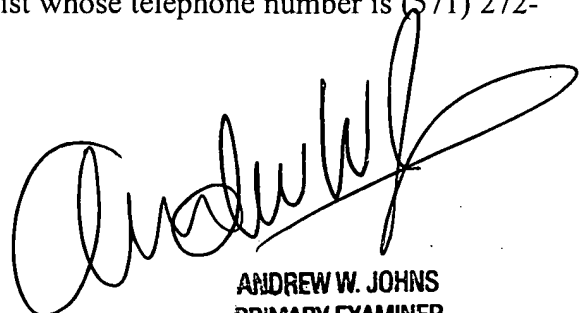
Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Prince and Abe et al. each teaches measuring the time characteristics of an arterial contrast agent concentration, but neither suggests the display stipulated by the claimed invention.
7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Johns whose telephone number is (571) 272-7391. The examiner is normally available Monday through Friday, at least during the hours of 9:00 am to 3:00 pm Eastern Time. The examiner may also be contacted by e-mail using the address: andrew.johns@uspto.gov. (Applicant is reminded of the Office policy regarding e-mail communications. See M.P.E.P. § 502.03)

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Matt Bella, can be reached at (571) 272-7778. The fax phone number for this art unit is (571) 273-8300. In order to ensure prompt delivery to the examiner, all unofficial communications should be clearly labeled as "Draft" or "Unofficial."

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center Receptionist whose telephone number is (571) 272-2600.

A. Johns
16 March 2007



ANDREW W. JOHNS
PRIMARY EXAMINER